Supreme Court, U.S.
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No. 04-1

IN THE

Supreme Court of the United States

GEORGE BLAISDELL,

Petitioner,

v.

CITY OF ROCHESTER, NEW HAMPSHIRE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

A. Both the United States District Court for the District of New Hampshire and the United States Circuit Court for the First Circuit were correct as a matter of law when, after reviewing the record, each ruled that the plaintiff's takings claim was inextricably intertwined with a state court judgment and therefore barred by the *Rooker-Feldman* doctrine.

B. The Petitioner's takings claim is not ripe.

C. The jury decided the fundamental factual issue essential to a takings claim when it determined that the Petitioner lacked an ownership or possessory interest in the personalty and collateral estoppel bars the Petitioner from relitigating this fact.

D. Pursuant to Supreme Court Rule 10, there is no compelling reason to grant Petitioner's writ.

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STATEMENT OF THE CASE

The Petitioner has a long and ignominious history of filing unsuccessful lawsuits against the City of Rochester, New Hampshire. In his latest filing, he repeats his dubious claim that the City somehow owes him damages for allegedly demolishing a building which it owned. The relevant history is as follows.[1]

A. Factual And Procedural Background

Since 1986 the Petitioner, George Blaisdell (hereinafter "Petitioner" or "Blaisdell"), has engaged the City of Rochester in multiple lawsuits regarding, *inter alia*, ownership of and actions related to 125 Charles Street in Rochester, NH. The City acquired the property by tax sale in 1985. Rather than vacate the premises, Blaisdell engaged the City in a long series of lawsuits.

In 1993, a fire destroyed the building and its contents. Subsequent to the fire, the City's police and fire departments restricted access to the unsafe premises. Blaisdell refused to obey the City's directives and was therefore arrested on several occasions for trespassing.

With the fire ravaged building in a residential area open to the elements during the winter for over a month, the City grew concerned about the danger it posed to residents. The City, therefore, acquired a Court order ruling that the premises constituted a threat to the public health and safety.

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1. Support for the following factual statements is within the record as it was submitted first to the District Court and then to the Circuit Court. Much of the foregoing also is reflected in the lower Court's Orders attached to Petitioner's Writ for Certiorari.

Pursuant to the Order, it began demolishing the building. The demolition ceased for a brief period of time to allow Blaisdell to retrieve any remaining salvageable personalty. Shortly thereafter, the City completely destroyed the building.

In April, 1996, Blaisdell filed a lawsuit in the United States District Court for the District of New Hampshire (hereinafter "District Court") in which he alleged numerous federal and state law claims. He withdrew the complaint in August, 1996. He re-filed his complaint in February, 1997, but did not serve this version of his complaint on the defendants. He filed an amended complaint in May, 1997 which he served and which the parties then litigated.

Blaisdell alleged a takings claim pursuant to 42 U.S.C. § 1983. He contended that when the City demolished the building which it owned following the fire it deprived him of some mysteriously undefined interest in personal property which he allegedly stored at the property. The City moved for and the District Court granted summary judgment ruling that because Mr. Blaisdell failed to exhaust his state administrative remedies his federal takings claim was not ripe. *See* Court's Order attached to Petitioner's Writ, pages 12a-14a. Thereafter, in a separate Order, the District Court granted the City summary judgment on Blaisdell's remaining federal claims and refused to exercise supplemental jurisdiction over his state law claims.

Subsequently, the experienced litigator that he is, Blaisdell filed four state law claims in the New Hampshire Stafford County Superior Court (hereinafter "state court" or "Superior Court") on the eve that the state savings statute, RSA 508:10, was to run. The state law claims he chose to file were conversion, intentional infliction of emotional distress, malicious prosecution, and civil conspiracy.

The defendants again filed for summary judgment. The state court granted all individual defendants summary judgment as to all counts. The court granted the City summary judgment as to three of the four counts.

In February, 2002 the parties conducted a two-week jury trial on Blaisdell's claim that the City was liable for allegedly converting the personal property which Blaisdell allegedly stored at 125 Charles Street. This was the same personal property that formed the basis of Blaisdell's previously dismissed federal takings claim.

After a two week trial in which the jury heard considerable testimony from the Petitioner, the jury returned a unanimous verdict in favor of the City. In reaching its decision, the jury completed a special verdict form on which it ruled, *inter alia*, that

> 3. Blaisdell had abandoned the personal property at 125 Charles Street prior to or at the time of the demolition;
>
> 5. The City acted pursuant to a legal duty when it destroyed the building and the personal property therein; and
>
> 6. The City was authorized by Court order to destroy the building and all personal property therein.

See Special Verdict Form attached to Petitioner's Writ, pages 17a-19a.

Blaisdell appealed the jury verdict to the New Hampshire Supreme Court which declined to accept the appeal.

On April 2, 2003, Blaisdell again filed a complaint in the New Hampshire Federal District Court. Based upon the exact same facts, he alleged a constitutional takings claim based upon the same personal property at issue in his conversion claim.

The City moved to dismiss arguing that the District Court lacked subject matter jurisdiction over Blaisdell's takings claim pursuant to the *Rooker-Feldman* doctrine. The City also argued that Blaisdell was collaterally estopped from relitigating factual issues the state court proceeding fully and fairly resolved. Blaisdell objected.

By Order dated June 30, 2003, the District Court (DiClerico, J.) granted the City's Motion to Dismiss. *See* Order attached to Petitioner's Writ, pages 3a-8a. The District Court correctly recognized that Blaisdell's takings claim was based upon the same personalty at issue in the state court trial. The Court recognized that Blaisdell's takings claim required him to prove that he had a property interest in the personalty. The Court identified that to prevail, therefore, Blaisdell had to prove that the state court jury was wrong when it concluded that Blaisdell abandoned the personalty and therefore had no ownership or possessory interest in it. Thus, the District Court concluded that Blaisdell's takings claim was inextricably intertwined with the State Court proceeding and therefore, pursuant to the *Rooker-Feldman* doctrine, the District Court lacked subject matter jurisdiction over the claim.

The Petitioner appealed to the United States Circuit Court for the First Circuit. The Circuit Court received the record and briefs from both parties. The First Circuit affirmed the New Hampshire District Court. *See* Order attached to Petitioner's Writ, pages 1a-2a.

LEGAL ARGUMENT

A. Both Lower Federal Courts Properly Determined That Petitioner's Federal Claim Is Inextricably Intertwined With The State Court Judgment

1. Governing Legal Principles

This Court is the only federal court with jurisdiction to review state court decisions. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *District of Colombia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). A federal district court, therefore, cannot exercise jurisdiction over a claim which is "inextricably intertwined" with claims adjudicated in state court. *Hill v. Town of Conway*, 193 F.3d 33, 39 (1st Cir. 1999). A federal claim is inextricably intertwined with the state-court claims "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Picard v. Members of Employee Retirement Bd.*, 275 F.3d 139, 145 (1st Cir. 2001), *citing Hill*, 193 F.3d at 39.

Rooker-Feldman applies regardless of whether the federal and state causes of action are the same. *Mandel v. Town of Orleans*, 326 F.3d 267, 271 (1st Cir. 2003). Moreover, *Rooker-Feldman* applies even where a federal action, on its face, does not seek to overtly invalidate a state court judgment. *Mandel*, 326 F.3d at 271. If a federal claim

succeeds only to the extent that a state court wrongly decided the issues before it, *Rooker-Feldman* mandates the dismissal of the federal claim. *Id.* at 271, *citing Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring).

2. The State Court Jury's Ruling That The Petitioner Abandoned The Property at Issue Precluded the Federal District Court from Finding that a Taking Occurred

Here, Blaisdell does not challenge the validity of the state court judgment. Instead, he alleges a takings claim under the Fifth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983. Specifically, he asserts that the City of Rochester "took" (e.g., by destroying) various chattels in a City owned building when the City demolished the building pursuant to a court order.

Assuming, *in arguendo*, that the Fifth Amendment applies to a claim of this ilk, it would protect an individual from having the government transform his chattels into state property against his will. *See Philip Morris v. Reilly*, 312 F.3d 24, 32 (1st Cir. 2002), *citing Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). It does this not by prohibiting a governmental entity from taking private property, but by requiring compensation if private property is taken. *Culebras Enter. Corp. v. Rivera Bros.*, 813 F.2d 506, 515 (1st Cir. 1987), *citing*, *Hudson v. Palmer*, 468 U.S. 517, 539 (1984) (O'Connor, conc.); *Williamson Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-95 (1985). Only when the State refuses to pay just compensation after a taking has occurred, can there be a constitutional violation under the Fifth Amendment. *Williamson Planning Commission*, 473 U.S. at 194-95;

Culebras, 813 F.2d at 515; *Lerman v. City of Portland*, 675 F. Supp. 1, 16 (D. Me. 1987).

As a threshold matter, therefore, a plaintiff seeking damages pursuant to the Takings Clause under 42 U.S.C. § 1983 must first establish a property interest. *See, e.g., Philip Morris, Inc.*, 312 F.3d at 32 (deciding first whether trade secrets constitute a property interest for purposes of a takings claim); *Deniz v. Municipality of Guaynabo*, 285 F.3d 142, 149 (1st Cir. 2002), *citing United States Olympic Comm. v. Intelicense Corp.*, 737 F.2d 263, 268 (2d Cir. 1984) (recognizing that "the ~~owner of an interest~~ in property at the time of [an] alleged taking has standing to assert that a taking has occurred.").

Here, both the District Court and the Circuit Court properly applied the foregoing analysis. The District Court acknowledged that during a two-week state court jury trial Blaisdell specifically litigated a conversion claim involving the same alleged chattels that form the basis of his takings claim. The District Court acknowledged that the state court jury specifically addressed whether Blaisdell had an alleged property interest in the chattels through several special verdict findings. The jury unequivocally concluded that Blaisdell had no possessory or ownership interest in the alleged personalty and in fact had abandoned it. Abandonment as a matter of New Hampshire property law constitutes the relinquishment of all ownership or possessory rights in property. *See, e.g., Lawlor v. Town of Salem*, 116 N.H. 61, 62-63 (1976).

Recognizing this, the District Court properly reasoned that the takings claim Blaisdell advanced required him to establish, contrary to the state court jury's special verdict findings, that he had a property interest in the personalty. In

the Court's words, "[f]or Blaisdell to succeed on his takings claim in this court, the factfinder would necessarily have to decide that Blaisdell owned or had property rights in the personalty he claims so that the state determination was wrong." *See* Order, Petitioner's Writ, page 6a. In short, Blaisdell's takings claim requires a federal court factfinder to overrule the state court jury's determination. The District Court, therefore, correctly concluded that Blaisdell's federal takings claim is inextricably intertwined with the State Court findings and therefore the *Rooker-Feldman* doctrine bars the District Court from exercising subject matter jurisdiction over it. Dismissal of the claim is the correct conclusion.

B. The Petitioner's Claim Is Not Ripe

This Court made it clear in *Williamson* that for a takings claim to be ripe, an individual must exhaust all available state procedures for obtaining compensation including administrative and common law actions. *Williamson*, *supra*. In this instance, Blaisdell chose to seek compensation through the State court process by asserting four common law claims of conversion, malicious prosecution, intentional infliction of emotional distress, and civil conspiracy. Blaisdell failed to seek compensation through other available state law remedies such as an inverse condemnation claim, *see Arcidi v. Town of Rye*, __ N.H. __, 846 A.2d 535 (2004), or a state law takings claim, *see Burrows v. City of Keene*, 121 N.H. 590, 598 (1981) (explaining that the New Hampshire Constitution pt. 1, art. 12. incorporates the same constitutional standards as the Fifth Amendment to the United States Constitution). As such, his federal takings claim is not ripe for adjudication pursuant to *Williamson*.

C. Alternate Grounds Warrant Affirmance

1. The Doctrine of Collateral Estoppel Bars the Claim

In addition to the foregoing, the City argued in its motion to dismiss that the doctrine of collateral estoppel barred the plaintiff's takings claim. This Court has recognized that "where a party has been given a full and fair hearing in state court, Section 1983 does not allow relitigation of the same issues in federal court 'simply because the state court's decision may have been erroneous.'" *Allen v. McCurry*, 449 U.S. 90, 101 (1984).

Federal courts generally accord preclusive effect to issues decided by state courts. *Allen*, 449 U.S. at 96. As this Court has directed, Congress has specifically required all federal courts to give preclusive effect to state court judgments whenever Courts from which the judgment emerged would do so. *Id.* In New Hampshire, the doctrine of collateral estoppel bars a party to a prior action from relitigating an issue or fact actually litigated and determined in the prior action. *Gephart v. Daigneault*, 137 N.H. 166, 172 (1993). In order for collateral estoppel to apply, the issue subject to estoppel must be identical in each action, the first action must have resolved the issue finally on the merits, and the party to be estopped must have appeared as a party in the first action. *Id.*

These elements are all present in this case. It is undisputed that Blaisdell was a party to the state court action. The relevant issue from Blaisdell's state case is whether Blaisdell had an ownership or possessory interest in the property he now claims was taken. This issue was clearly and specifically determined by the jury after a full trial.

The jury determined that Blaisdell abandoned the property in question, and thus that he had no ownership or possessory interest in it. As set forth previously, a plaintiff pursuing a takings claim must make a threshold showing that he had a possessory interest in the property which he claims was taken. *See Philip Morris, Inc.*, 312 F.3d at 32; *Deniz*, 285 F.3d at 149. The issue of whether Blaisdell had an interest in the property in question was clearly determined by the state court jury. Blaisdell must therefore be collaterally estopped from relitigating this fully and fairly resolved factual issue in federal court.

Several Circuit Courts of Appeal have applied collateral estoppel in analogous cases. In *Peduto v. City of North Wildwood*, 878 F.2d 725 (3d Cir. 1989), the plaintiffs filed a complaint in state court in which they pleaded both state and federal causes of action including an inverse condemnation takings claim. New Jersey law required the plaintiffs to allege both state and federal claims in their pleading to avoid waiver. *Peduto*, 878 F.2d at 727. After the Superior Court of New Jersey dismissed these claims, plaintiffs filed a nearly identical complaint in Federal District Court. *Id.* They again alleged an inverse condemnation claim. The Federal District Court dismissed the plaintiffs' complaint, holding that the plaintiffs' claims were barred by the doctrine of claim preclusion and 28 U.S.C. § 1738, the full faith and credit statute. *Id.*

The plaintiffs appealed to the Third Circuit Court of Appeals. They contended that because they were forced to litigate issues relating to their federal claims in state court, the subsequent dismissal on res judicata grounds denied them of a federal forum for their federal claims. *Id.* The Third Circuit properly ruled that issues determined by a full and fair state court hearing may not be relitigated in Federal Court. *Id.* at 728.

Similarly, in *Wilkenson v. Pitkin County Board of Co. Com.*, 142 F.3d 1319 (10th Cir. 1998), the Tenth Circuit ruled that a plaintiff who had unsuccessfully pursued state law remedies in an attempt to ripen his federal claims was subject to issue and claim preclusion. *Wilkenson*, 142 F.3d at 1323. The court held that the factual basis for the plaintiff's state court actions were so similar to the facts necessary to prove a federal taking that the application of res judicata was appropriate. *Id.* at 1323. The Tenth Circuit advised that plaintiffs are not guaranteed the right to pursue state claims to judgment and then return to federal court to litigate federal claims. *Id.* at 1324.

Like the plaintiffs in the above cases, the law required Blaisdell to exhaust his state remedies before pursuing a takings action in federal court. He chose to pursue a conversion claim. He, therefore, chose to pursue a claim that required him to prove that the City of Rochester wrongfully exercised dominion or control over his property to such an extent that the City should be made to pay the entire cost of the property. *See Muzzy v. Rockingham County Trust Co.*, 113 N.H. 520, 523 (1973) (citing Restatement (Second) of Torts § 222A(1) (1965)).

Now, Blaisdell suggests that because the state law conversion claim and a federal takings claim require proof of different elements, he has the right to proceed with his takings claim in federal court.[2] In fact, ignoring controlling

2. For this principle, the petitioner cites to *Desi's Pizza Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 425 (3d Cir. 2003). *See* Petition, page 14. However, *Desi's Pizza* is inapposite to the instant case. There, the state case related to the prosecution of the violation of a local ordinance whereas the federal claim required proof of motive and/or

(Cont'd)

precedent he indignantly suggests that he is constitutionally entitled to such a proceeding because otherwise he will have been unfairly denied a federal forum. *See Mandel*, 326 F.3d at 271 (recognizing that *Rooker-Feldman* applies regardless of whether the federal and state causes of action are the same).

The above referenced case law and the well recognized principles of collateral estoppel dictate otherwise. Petitioner's argument simply ignores that although the two claims (e.g., takings and conversion) may have different elements, they rely upon many of the same factual findings. Both require the plaintiff to prove the fact of ownership or possessory interest in the relevant property. Our legal system has recognized that an individual is entitled to one full and fair opportunity to litigate such an issue. Blaisdell received this opportunity before the state court jury. He is dissatisfied with the result and now, under the guise of fictional unfairness, contends that he should be afforded another

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(Cont'd)

intent to discriminate. The federal claim, therefore, was not predicated or dependent upon the state court action. As a result, the Third Circuit correctly determined that the state proceeding and federal proceeding were not inextricably intertwined.

In the instant case, however, the two claims the plaintiff has attempted to litigate require proof of the exact same element—ownership or possession of property. The plaintiff does not dispute that he fully and fairly litigated this issue in state court. He now claims, however, that he should be allowed to relitigate in federal court simply because he seeks relief under a different legal theory. Unfortunately, as herein explained, precedent establishes that when the state and federal claims require proof of the same element the claims are inextricably intertwined and the *Rooker-Feldman* doctrine bars the lower federal courts from exercising subject matter jurisdiction over the subsequent federal proceeding.

opportunity. Collateral estoppel which is predicated upon fundamental constitutional principles dictates that he must not be afforded such an opportunity.[3] *See supra Allen*; *see also Shooting Point, LLC v. W.M. Cummings*, 238 F. Supp. 2d 729 (E.D. Va. 2002) (recognizing in a takings case that plaintiffs who lose in state court cannot simply recast their claims under the guise of constitutional claims in order to relitigate factual issues).

D. There Is No Compelling Reason For This Court To Accept This Appeal

This Court's rules provide that it only grants a writ of certiorari for compelling reasons. *See* Supreme Court Rule 10. Although the rule explains that it is not a full measure of the Court's discretion, it identifies four specific instances which the Court believes constitute compelling reasons. None are present here.

The argument that petitioner seems to offer consistent with this rule which allegedly compels acceptance of his writ is that the lower courts allegedly require guidance regarding the meaning of the phrase "inextricably intertwined." Petitioner's Writ, page 12. However, the petitioner has failed

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3. The petitioner suggests that such a result is unfair because it might effectively mean that every individual seeking to file a takings claim will have their claim decided in state court and never receive the opportunity to litigate in federal court. This ignores the fact that those individuals who file in state court and receive a positive ruling on factual issues germane to a takings claim can then proceed to federal court with a takings claim. In such an instance, the factual issues would not need to be relitigated and thus there would be no threat to the constitutional principles underlying the doctrine of collateral estoppel.

to identify conflicting authority amongst the circuits on this issue. In fact, the petitioner explains that "all of the federal circuits have" followed this Court's direction and when applying the *Rooker-Feldman* doctrine identified the pillars upon which the state court judgment at issue rests. *Id.* The petitioner does not identify any decisions which suggests that the circuits have applied this standard differently or which substantiates that the Circuits require this Court's valuable intervention and guidance regarding how to assess the facts that form the basis of the state court judgment.

The remainder of petitioner's writ evidences that his main contention is simply that he disagrees with the manner in which both the District Court and the Circuit Court applied Rooker-Feldman precedent to the facts of his case.[4] The same Supreme Court rule, Rule 10, states that petitions for a writ are rarely granted when the asserted error is the misapplication of a properly stated rule of law. *Id.* Pursuant to the Court's own rules, therefore, this is an instance in which a writ for certiorari should not be granted.

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4. Nowhere does the petitioner suggest that the District Court or the Circuit Court applied the wrong legal standards.

CONCLUSION

For the reasons stated above, or any alternative reason this honorable Court deems sufficient, the City of Rochester respectfully requests that this Court deny the Petitioner's writ for certiorari.

Respectfully submitted,

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